

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD SCOTT GINEZ and DEPARTMENT OF THE NAVY,
MARINE CORPS AIR GROUND COMBAT CENTER, Twentynine Palms, CA

*Docket No. 98-214; Submitted on the Record;
Issued September 17, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant met his burden of proof in establishing that he sustained an injury to his left wrist in the performance of duty causally related to factors of his federal employment.

On July 7, 1997 appellant, then a 53-year-old air conditioning, refrigerator and heating repairman, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he suffered from deep pain in his left wrist as a result of his employment which involved pushing, pulling and climbing. At that time, the employing establishment noted that appellant was currently working in another shop where he could work with use of one arm.

In support of his claim, appellant submitted notes from Dr. Jerome Seeraty, an osteopath specializing in family medicine. These notes are largely illegible, but appear to indicate that appellant saw Dr. Seeraty on May 23, 1997 complaining of left wrist pain. Appellant also submitted a June 11, 1997 release to modified duty by Dr. Glenn Cunningham, a Board-certified orthopedic surgeon, in which he indicated that appellant was not to use his left arm and hand.

In response to the Office of Workers' Compensation Programs' request for further information, appellant submitted an August 14, 1997 report of a computerized tomography (CT) scan of the left wrist -- with adjunctive magnetic resonance imaging (MRI) scan by Dr. Michael W. Kistler, a Board-certified radiologist. He diagnosed "[a]vascular necrosis -- Kienbock's disease -- lunate." He also stated that considering "the degree of collapse, elongation, migration of the capitate and subluxation of scaphoid, this would qualify for standard radiographic designation of Stage III-B."

Also submitted was a letter from appellant, in which he answered various questions set forth by the Office. Appellant specifically noted that he does not participate in physical activities outside of work, that his left wrist started giving him problems during mid 1995, that the only injury that he ever had was carpal tunnel syndrome for which he had operations on both

wrists in 1994, that he believed he was released to assume his duties prematurely as his left wrist had not fully healed, that the injury was work related and that the Office should have access to this information.

The case record also contains an August 8, 1995 opinion by Dr. John B. Thompson, a Board-certified neurosurgeon, in which he notes that appellant was recovering well from his carpal tunnel surgery, and that appellant “can return to his usual and customary duties in an unrestricted way.”¹

In a decision dated September 10, 1997, the Office denied appellant’s claim for compensation benefits on the grounds that he failed to establish fact of injury. The Office noted:

“Since your previous claim was accepted for carpal tunnel syndrome, it is accepted that your regular duties could contribute to a wrist condition. In addition, medical evidence supports that you have a left wrist condition. However, none of the medical evidence of record includes a physician’s opinion on the cause of the condition and therefore you have not met the criteria necessary for further consideration of your claim and have not demonstrated that you in fact sustained a work-related left wrist injury as claimed.”

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained a left wrist injury in the performance of duty causally related to factors of his federal employment.

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of establishing the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that an injury was sustained in the performance of the duty alleged and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in a the performance of duty in an occupational disease claim, an appellant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is alleged; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence

¹ The Board notes that this report referenced appellant’s claim for carpal tunnel syndrome in Office File No. A13-1050212.

² 5 U.S.C. §§ 8101-8193.

³ *Louise F. Garnett*, 47 ECAB 639, 643 (1996); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ The Office’s regulations clarify that a traumatic injury refers to injury caused by a specific event or incident or series of events or incidents occurring within a single workday or work shift whereas occupational disease refers to injury produced by employment factors which occur or are present over a period longer than a single workday or shift; *see* 20 C.F.R. §10.5(a) (15), (16).

or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the appellant were the proximate cause of the condition for which compensation is claimed, or stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the appellant.⁵ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.⁶ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the appellant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors.

In the instant case, there is no medical opinion evidence supporting a causal relationship between appellant's injured left wrist and his employment. Although the June 11, 1997 note from Dr. Cunningham provides work restrictions, it does not address whether these restrictions resulted from factors of appellant's employment. The notes of Dr. Seeraty indicate that appellant had left wrist pain and left thigh pain, however, there is no diagnosis, no history of injury, and no cause of symptoms. In his report of August 8, 1995, Dr. Thompson discusses the progress of appellant's carpal tunnel syndrome in Office File No. A13-1050212, but does not address the causal relationship, if any, between appellant's claimed left wrist injury and his employment factors. Dr. Kistler's August 14, 1997 report merely discusses the results of the CT scan and MRI scan of the left wrist without providing details as to what caused appellant's alleged employment-related injury.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁷ Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

⁵ *Victor J. Woodhams*, 41 ECAB 345, 352-54 (1989).

⁶ *Ern Reynolds*, 45 ECAB 690 (1994).

⁷ *Victor J. Woodhams*, *supra* note 5.

The decision of the Office of Workers' Compensation Programs dated September 10, 1997 is hereby affirmed.⁸

Dated, Washington, D.C.
September 17, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member

⁸ The Board notes that subsequent to the Office's September 10, 1997 decision, the Office received additional medical evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision, in this case, September 10, 1997; *see* 20 C.F.R. 501.2(c)(1). For the same reason, evidence may not be reviewed that was presented for the first time on appeal. *Id.*; *Donald Jones-Booker*, 47 ECAB 785, 786 (1996); *George A. Hirsch*, 47 ECAB 520, 526 (1996).